

It has been said in this case, that the defendant, McAttee, had notice in fact of the existence of this alleged lien, or if he had not notice in fact, he had sufficient information to put him on inquiry, and in either case is bound by it. But that he had not notice in fact, is, I think, very plain. Nor had he such notice as was even required to put him on inquiry. There can, from the very nature of the case, be no fixed or general rule upon this subject, and each case, therefore, must depend upon its own circumstances. The cases and the doctrine upon the subject are collected and commented upon by Mr. Justice Story, in the first volume of his *Commentaries on Equity*, section 400, and will be found, I think, not to embrace that now before this court.

The sale to McAttee took place on the 11th of November, 1847, and he admits, in his answer, that about the time of the sale, he heard that Dall was the surety of Schley, and was likely to have to answer for many of his debts. This admission and the statement by the crier who made the sale, that the property was sold subject to all prior claims and judgments, it is supposed fixes McAttee with notice. Such, however, is not my opinion. Suppose Mr. McAttee upon receiving this information had addressed himself either to Schley or Dall, what would they have told him? Certainly not that there was, then, an existing equitable contract for a mortgage. On the contrary, they would have told him that as far back as January, 1846, the mortgage which had been executed, had been given up and cancelled by agreement between them.

I am, therefore, of opinion, under all the circumstances of this case, that the relief prayed by this bill against McAttee, cannot be granted, and I shall, therefore, dismiss it, as to him, though as the complainant Gill instituted this suit in the proper and judicious discharge of his duty as trustee, I shall not subject him to cost.

---

RICHARD W. GILL and NICHOLAS HAMMOND for Complainants.

WM. B. CLARKE and THOMAS G. PRATT for the defendant McAttee.